

Jack R. Nelson (SBN 111863)
Email: jnelson@reedsmith.com
Tyree P. Jones, Jr. (SBN 127631)
Email: tpjones@reedsmith.com
Heather B. Hoesterey (SBN 201254)
Email: hhoesterey@reedsmith.com
REED SMITH LLP
Two Embarcadero Center, Suite 2000
San Francisco, CA 94111-3922

Mailing Address:
P.O. Box 7936
San Francisco, CA 94120-7936

Telephone: +1 415 543 8700
Facsimile: +1 415 391 8269

Attorneys for Defendants
World Savings Bank, FSB

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

LETICIA ZAMORA and DANIEL PEREZ and
ELIZABETH PEREZ.

No.: C 07 4603 TEH

CLASS ACTION

**JOINT RULE 26(F) REPORT AND CASE
MANAGEMENT CONFERENCE
STATEMENT**

Case Management Conference
Date : December 10, 2007
Time: 1:30 p.m.
Place: Ctrm. 12

The Honorable Thelton E. Henderson

vs.
WACHOVIA CORPORATION and WORLD
SAVINGS BANK,
Defendants

Defendants

**WACHOVIA CORPORATION and WORLD
SAVINGS BANK.**

Defendants

On November 30, 2007, the parties, by and through their respective counsel of record, conferred and discussed the issues addressed in Federal Rule of Civil Procedure 26(f) and Civil Local Rule 16-9.

Counsel hereby respectfully submit the following joint report reflecting the matters on which they agree and expressing their respective views concerning the issues on which they disagree.

1 1. Jurisdiction and Service.

2 This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiffs'
 3 First Amended Class Action Complaint asserts claims against defendant World Savings Bank, FSB
 4 ("World") for violations of the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, violations of
 5 the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* and the Civil Rights Act, 42 U.S.C. §§ 1981 and
 6 1982.

7 All parties have been served. Defendant World filed an Answer to Plaintiff's Complaint on
 8 September 28, 2007 and this matter therefore is at issue. Defendant Wachovia Corporation
 9 ("Wachovia"), a financial holding company organized under the Bank Holding Company Act of
 10 1956, filed a Motion to Dismiss on September 28, 2007. Pursuant to the parties' stipulation, on
 11 November 16, 2007, this Court entered an Order dismissing Wachovia without prejudice.

12 2. Facts.**13 A. Plaintiffs' Factual Contentions.**

14 Plaintiffs Leticia Zamora and Daniel and Elizabeth Perez ("Plaintiffs") bring this proposed class
 15 action on behalf of themselves and all similarly situated minority borrowers alleging that Defendant
 16 World Savings Bank ("Defendant") has engaged in both intentional and disparate impact race
 17 discrimination in originating, funding, acquiring and servicing residential mortgage loans. Plaintiffs
 18 each are members of a protected minority group, and each purchased a residential mortgage loan
 19 from Defendants within the time frame required by all statutes of limitation relevant herein.
 20 Plaintiffs' First Amended Class Action Complaint asserts four (4) Causes of Action: for violation of
 21 the Equal Credit Opportunity Act (15 U.S.C. §§1691-1691f); for violation of the Fair Housing Act
 22 (42 U.S.C. §§3601-3619); for racial discrimination under 42 U.S.C. §1981; and for racial
 23 discrimination in violation of 42 U.S.C. §1982.

24 Plaintiffs allege that Defendant engaged in unlawful racial discrimination by developing and
 25 implementing mortgage pricing policies and procedures that provide financial incentives to its
 26 authorized loan officers, mortgage brokers and correspondent lenders to make subjective decisions
 27 causing minority borrowers to pay higher interest rates, charges and other costs than similarly
 28 situated white borrowers. Defendant's authorized loan officers, mortgage brokers and correspondent

1 lenders are given discretion – and are actually encouraged – to increase interest rates and charge
 2 additional fees to certain borrowers. These policies result in minorities receiving home loans with
 3 higher fees, such as yield-spread premiums, as well as higher rates and costs and other (such as pre-
 4 payment penalties) that are more unfavorable than the loan terms received similarly situated non-
 5 minority borrowers. Thus, for example, when minority borrowers pay yield spread premiums on
 6 loans including pre-payment penalties, Defendant shares in additional income and profits generated
 7 by the premium as the borrower is locked into a higher interest rate. Defendant's systemic policies
 8 and procedures, which encourage subjective underwriting and pricing decisions, result in a pattern of
 9 discrimination against minorities. Defendant cannot justify these policies by business necessity, and
 10 the discriminatory outcome could be avoided through the use of alternative underwriting and pricing
 11 policies and procedures.

12 **B. Defendant's Factual Contentions.**

13 Defendant originates and funds mortgage loans. Borrowers may obtain the mortgage loans
 14 through loan officers or referrals which come from outside brokers not affiliated with World.
 15 Defendant denies Plaintiffs' claims. Specifically, Defendant denies that it engaged in any racially
 16 discriminatory mortgage lending practices and denies that any of the purported putative class
 17 members have been subject to racial discrimination. Defendant denies that its credit pricing policies
 18 and procedures in any way impose higher rates and fees on minority mortgage borrowers than
 19 similarly situated non-minority mortgage borrowers. Defendant maintains credit pricing policies and
 20 procedures and Defendants's policies and procedures include policies and procedures to enforce
 21 compliance with fair lending procedures, and review of loans for compliance with fair lending
 22 procedures. Defendant contends that Plaintiffs were not discriminated against and did not pay any
 23 fee or interest rate unrelated to their creditworthiness or risk.

24 **3. Legal Issues.**

25 (1) Whether Plaintiffs may maintain a class action pursuant to Federal Rule of
 26 Civil Procedure Rule 23, and, if so, the appropriate class period and scope of the purported class;
 27 (2) Whether Defendant's residential mortgage lending policies and procedures
 28 violate the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*;

(3) Whether Defendant's residential mortgage lending policies and procedures violate the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*;

(4) Whether Defendant's residential mortgage lending policies and procedures violate the Civil Rights Act, 42 U.S.C. §§ 1981 and 1982;

(5) Whether Defendant has any discriminatory underwriting, or credit pricing policies and/or whether Defendant's underwriting and pricing policies impose higher rates and fees on minority mortgage borrowers than similarly situated non-minority mortgage borrowers;

(6) Whether Plaintiffs' claims are barred by the applicable statutes of limitations, including, without limitation, 15 U.S.C. § 1691e(f), 42 U.S.C. § 3613(a)(1)A and 28 U.S.C. § 1658(a);

(7) Whether Plaintiffs' claims are barred by the doctrines of waiver, estoppel or consent because Plaintiffs accepted the terms of loans and accepted funds pursuant to the terms of the loan contracts;

(8) Whether Defendant engages in discriminatory practices, acts with discriminatory intent and/or whether Defendant's lending policies and procedures have an impermissible disparate impact on minority borrowers;

(9) Whether Plaintiffs and the proposed class is entitled to injunctive relief, monetary relief, other equitable relief, costs of suit, attorneys' fees and/or punitive damages.

4. Motions.

A. Pending Motions.

No motions are currently pending before this Court.

B. Anticipated Pretrial Motions.

Plaintiffs will file a motion for entry of Pretrial Order No. 1 appointing interim class counsel pursuant to Rule 23(g), establishing an organizational structure of Plaintiffs' counsel and establishing procedures for subsequently filed related cases, among other things. Plaintiffs will circulate the proposed motion to seek consent of Defendant prior to filing the motion with the Court.

1 Plaintiffs also intend to file a motion, if the parties are unable to resolve the issues by
2 stipulation, for entry of an order requiring the parties to preserve documents and information and a
3 protocol for the conduct of electronic discovery in this case. *See* Section 6, herein.

4 Plaintiffs will file a motion for class certification. *See* Section 9, herein, for a proposed
5 scheduling order relating to Plaintiffs' certification motion.

6 The extent and degree of discovery motion practice, if any, is presently unknown.

7 Defendants anticipate filing of a motion for summary judgment pursuant to Federal Rules of
8 Civil Procedure Rule 56, or other dispositive motion(s).

9 The parties anticipate that discovery in this action may include the discovery of confidential,
10 proprietary and trade secret information and/or information protected by privacy rights, and,
11 accordingly, in order to facilitate discovery, have engaged in negotiations regarding a Stipulation
12 and Proposed Protective Order governing the treatment of confidential information. The parties
13 intend to submit such a stipulation and proposed protective order to this Court. In the event any
14 party seeks to file any information designated as confidential pursuant to any Protective Order
15 entered in this case, the party shall seek an Order authorizing the sealing of the document or portions
16 thereof pursuant to Civil Local Rule 79-5.

17 In accordance with Local Rule 26-1, counsel for the parties have discussed the complexity of
18 this case. Counsel agree that certain procedures of the Manual for Complex Litigation may be useful
19 for the management of this action. The parties intend to consult the Manual for Complex Litigation
20 to assess whether specified procedures should be utilized as the case progresses.

21 **5. Amendment of Pleadings.**

22 The parties propose that the deadline to amend the complaint be April 7, 2008.

23 **6. Evidence Preservation.**

24 Defendant has undertaken steps to preserve evidence relevant to the issues reasonably
25 evident in this action, including interdiction of any document-destruction program and any ongoing
26 erasures of e-mails, voice mails and other electronically-recorded material reasonably believed to be
27 relevant to the issues reasonably evident in this action. The parties have engaged in negotiations
28

1 regarding a stipulated order for the preservation of documents and information and procedures
 2 governing electronic discovery.

3 **7. Disclosures.**

4 The parties anticipate exchange of their Initial Disclosures pursuant to Federal Rule of Civil
 5 Procedure 26(a)(1) on January 15, 2008.

6 **8. Discovery.**

7 **A. Discovery Subjects, Phased Discovery and Completion of Discovery**

8 Counsel for Plaintiffs and Defendants conferred on November 30, 2007. The parties agree
 9 upon the following proposed pre-trial schedule:

10	Non-expert discovery cut-off	January 30, 2009
11	Parties' initial expert reports	March 2, 2009
12	Parties' rebuttal expert reports	April 21, 2009
13	Completion of expert discovery	May 4, 2009

14 **B. Discovery Limitations.**

15 The parties request a maximum of thirty (30) depositions per side and that the parties be
 16 permitted to serve fifty (50) interrogatories per side.

17 **9. Class Actions.**

18 Pursuant to Local Rule 16-9(b), Plaintiffs assert this action is maintainable as a class action
 19 pursuant to sections (a), (b)(2) and/or (b)(3) of Rule 23 of the Federal Rules of Civil Procedure. The
 20 First Amended Class Action Complaint defines the class generally as: all minorities(non-Caucasians
 21 and other minority racial groups protected under 42 U.S.C. §§ 1981, 1982 3604 and 15 U.S.C. §
 22 1961) who have entered into residential mortgage loan contracts that were financed or purchased by
 23 World Savings Bank, FSB, and who have been subject to racial discrimination.

24 Named Plaintiffs Leticia Zamora, Daniel Perez and Elizabeth Perez allege they are entitled to
 25 maintain the action under Federal Rules of Civil Procedure Rule 23. In accordance with Local Rule
 26 16-9(b), Plaintiffs assert that the facts which show Plaintiffs' entitlement to maintain the action
 27 under Fed. R. Civ. P. 23 include the following: the Class consists of many thousands, or tens of
 28 thousands, of individuals geographically dispersed throughout the United States; all members of the

1 Class have been subjected to and affected by Defendant's practice of assessing yield spread
 2 premiums and other discretionary fees and imposing other adverse terms and features on mortgage
 3 loans; Plaintiffs and the other members of the propose class were subjected to yield spread premiums
 4 and other discretionary charges and fees and other terms that have disproportionately affected
 5 minority borrowers; Plaintiffs are committed to vigorous prosecution of the class claims and have
 6 retained attorneys who have extensive experience in class actions and consumer protection and
 7 credit discrimination actions; and Defendant has acted or refused to act on grounds generally
 8 applicable to the proposed class. See L.R. 16-9(b)(3).

9 Pursuant to the proposed pretrial schedule as set forth herein, Plaintiffs request a deadline to
 10 file their motion for class certification on or before July 7, 2008.

11 **10. Related Cases.**

12 The parties do not know of any related proceedings at this time.

13 **11. Relief.**

14 Plaintiffs primarily seek injunctive relief to prohibit the discriminatory practices of
 15 defendant. Plaintiff also may seek other equitable relief including restitution, monetary relief and
 16 punitive damages.

17 Defendant's investigation of Plaintiffs claims is ongoing. While Defendant asserts Plaintiffs
 18 have not alleged any basis upon which liability may be established, Defendant reserves its right to
 19 submit to this Court the basis upon which Defendant contends damages should be calculated if
 20 liability is established. Defendant contends that if liability is established, there is no basis on which
 21 to assert punitive damages.

22 **12. Settlement and ADR.**

23 The parties have conferred concerning the likelihood of settlement and they continue to do
 24 so. In accordance with Local Rule 16-8 and Alternative Dispute Resolution Local Rule 3-5, the
 25 parties submitted a Stipulation re Selecting ADR Process, and on November 27, 2007 this Court
 26 entered an Order directing the parties to meet and confer within 30 days to determine whether a
 27 private ADR process will facilitate an early resolution of the case.

28 **13. Consent to Magistrate Judge for all Purposes.**

1 The parties do not consent to a Magistrate Judge for all purposes.

2 **14. Other References.**

3 The parties do not believe this case is suitable for other reference at this time.

4 **15. Narrowing of Issues.**

5 At this stage in the proceedings, the parties are unaware of any issues that can be narrowed
6 by agreement or motion, other than the anticipated motions set forth in section 4, herein. The parties
7 agree to continue to meet and confer regarding these issues and to inform this Court as applicable in
8 the event discovery indicates agreement may be reached regarding the scope of any issues or reveals
9 any additional basis to narrow the issues through motion practice.

10 **16. Expedited Schedule.**

11 The parties agree this case is not appropriate for an expedited or streamlined procedure.

12 **17. Scheduling.**

13 Pursuant to their November 30, 2007 conference of counsel, the parties propose the pre-trial
14 and trial schedule attached hereto as Exhibit A.

15 **18. Trial.**

16 All parties request a jury trial.

17 **19. Disclosure of Non-party Interest Entities or Persons.**

18 Pursuant to Civil Local Rule 3-16, all parties have filed a Certification of Interested Entities
19 or Persons.

20 Pursuant to Civil Local Rule 3-16, Defendant restates and certifies that the following listed
21 persons, associations of persons, firms, partnerships, corporations (including parent corporations) or
22 other entities (i) have a financial interest in the subject matter in controversy or in a party to the
23 proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be
24 substantially affected by the outcome of this proceeding: Golden West Financial Corporation, of
25 which World Savings Bank, FSB is a subsidiary.

26 **20. Other Matters.**

27 The parties do not have any additional matters to raise at this time.

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2 DATED: December 3, 2007.
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BONNETT, FAIRBOURN, FRIEDMAN & BALINT,
P.C.

5 By _____
6 Andrew S. Friedman
7 Wendy J. Harrison
8 2901 N. Central Avenue, Suite 1000
Phoenix, Arizona 85012
Telephone: (602) 274-1100
Facsimile: (602) 274-1199

DATED: December 3, 2007.

9 REED SMITH LLP
10
11 By _____
12 Jack R. Nelson
13 Tyree P. Jones, Jr.
14 Heather B. Hoesterey
15 Attorneys for Defendant
16 World Savings Bank, FSB
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EXHIBIT A
to Joint Rule 26(f) Report and Case Management Conference Statement
Proposed Pre-Trial Scheduling

Pretrial or Trial Event	Parties' Requested Deadline
Deadline to Amend Pleadings	April 7, 2008
Motion for Class Certification	July 7, 2008
Non-Expert Discovery Cut-Off Date	January 30, 2009
Opening Expert Witness Disclosure [See F.R.Civ.P. 26(a)(2)]	March 2, 2009
Rebuttal Expert Witness Disclosure	April 21, 2009
Expert Discovery Cut-Off Date	May 4, 2009
Last day for hand-serving motions and filings (other than Motions in Limine)	June 1, 2009
Parties to meet and confer to prepare joint final pretrial conference statement and proposed order and coordinated submission of trial exhibits and other material	Parties meet and confer following resolution of class certification motion
Filing Joint Pretrial Conference Statement and Proposed Order	Parties meet and confer following resolution of class certification motion
Lodging exhibits and other trial materials	Parties meet and confer following resolution of class certification motion
Last day to serve and file briefs on disputed issues of law, including procedural and evidentiary issues	Parties meet and confer following resolution of class certification motion
Serve and file requested <i>voir dire</i> , jury instructions and forms of verdict	Parties meet and confer following resolution of class certification motion
Serve and file statements designating deposition excerpts, form interrogatory answers and responses to requests for admission to be offered at trial other than for impeachment or rebuttal	Parties meet and confer following resolution of class certification motion

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Pretrial or Trial Event	Parties' Requested Deadline
Last day to meet and confer regarding objections to evidence	Parties meet and confer following resolution of class certification motion
Final Pretrial Conference and Hearing on Motions in Limine	Parties meet and confer following resolution of class certification motion
Trial Date	Parties meet and confer following resolution of class certification motion

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